UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

C.P., individually and on behalf of F.P., a minor child; D.O., individually and on behalf of M.O., a minor child; S.B.C., individually and on behalf of C.C., a minor child; A.S., individually and on behalf of A.A.S., a minor child; M.S., individually and on behalf of her minor child, H.S.; Y.H.S., individually and on behalf of his minor child, C.H.S.; E.M. on behalf of her minor child, C.M.; M.M., individually and on behalf of K.M.; L.G., individually and on behalf of her minor child, T.M.; E.P., individually and on behalf of her minor child, Ea.P.; and on behalf of ALL OTHERS SIMILARLY SITUATED, Plaintiffs, v. NEW JERSEY DEPARTMENT OF EDUCATION; DR. LILY LAUX, Commissioner of Education, in her official capacity, Defendants.	Civil Action No. 19-cv-12807-ESK-MJS Edward S. Kiel, U.S.D.J. Matthew J. Skahill, U.S.M.J. Jaynee LaVecchia, Special Master **ORDER OF SPECIAL MASTER**

LaVECCHIA, Special Master.

Pursuant to the Amended Consent Order ("ACO") in this matter, endorsed on May 5, 2026 by the Honorable Edward S. Kiel, U.S.D.J., the undersigned Special Master has been charged with developing a Compliance Plan for submission to the Court and thereafter reporting on the progress of the New Jersey Department of

Education ("NJDOE") in achieving 95% compliance with the time frames for due process hearings set forth in 34 C.F.R. § 300.515, as required by the Original Consent Order ("CO"), as amended by the ACO.

In beginning work on the development of an appropriate Compliance Plan and reviewing initial data, as well as background information and materials pertaining to use of the Adjournment Form required by the CO and ACO, the Special Master has determined it essential to her task to eliminate ambiguity in how the 45-day time period for the issuance of a final decision in a due process hearing is to be calculated and how its expiration, including any extension, is to be recorded. Certainty and transparency in the method of initial calculation and any subsequent extension of the final decision due date ("Final Decision Date" or "FDD") will be integral to the development of a Compliance Plan that is clear, understandable, and capable of consistent evaluation. That certainty, together with accompanying specificity, previously had not been adequately detailed. Further, it was unclear to the Special Master whether there was agreement, and to what degree, on these topics between the parties.

Accordingly, pursuant to Federal Rule of Civil Procedure 53(c)(1)(B), the Special Master issued an Order on June 22, 2026 (ECF No. 661) directing the parties to submit briefing on these issues. *See* Fed. R. Civ. P. 53(c)(1)(B) (authorizing a special master to "take all appropriate measures to perform the assigned duties fairly

and efficiently."). Following a joint submission from the parties (ECF No. 662), the Special Master issued a Supplemental Order on June 27, 2026 (ECF No. 663), identifying several additional questions on which she wished to hear from the parties.

On July 3, 2026, the Special Master conducted an on-the-record hearing with counsel for the class representatives of Plaintiffs and counsel for Defendants. At the hearing, there was remarkable agreement between the parties. For example, the parties agreed on the importance of specificity concerning the calculation of the 45-day period for conducting a due process hearing. The parties additionally agreed with respect to when and how the 45-day period's Final Decision Due Date is legitimately extended by a party-generated request. There was also ready agreement that improved specificity was needed in order to properly assess compliance with the time frames in 34 C.F.R. § 300.515.

Accordingly, subject to any modification by the Court, the Special Master sets forth the following guidance, and some directed actions, to clarify, for purposes of compliance under the ACO, the assessment of the 45-day time period and NJDOE's and its agents' compliance with that federal requirement. The ensuing principles may be subject to further refinement, as needed, in order to fine-tune compliance as any performance shortcomings are revealed through future study and monitoring.

1. Initially, it bears noting that the Court has acknowledged certain bedrock legal requirements that govern the timeframes in this matter. As the Court

stated in its earlier decision denying Cross-Motions for Summary Judgment, "once a due process complaint has been filed [pursuant to 20 U.S.C. § 1415 (b)(6)], Congress has set strict deadlines by which certain events must occur." (ECF No. 391 at 9 (citing 20 U.S.C. § 1415 (f)(1)(B)(ii) and 34 C.F.R. § 300.515(a))). Once the 30-day resolution period under 34 C.F.R. § 300.510(b) expires, due process petitions must be decided by hearing officers within 45 days. *See* 34 C.F.R. § 300.515(a) (requiring states that receive federal funding, such as New Jersey, to ensure that within that time "a final decision is reached in the hearing" and "a copy of the decision is mailed to the parties"). The Court's decision also noted that 34 C.F.R. § 300.515 further provides in subsection (c) that "[a] hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party." Thus, the Court stated, "[n]o other delays are contemplated. Therefore, if no specific adjournments are requested by the parties, a final decision must be rendered within 45 days after the end of the 30-day resolution period." (ECF No. 391 at 11; *see also* ECF No. 98 at 12 (reciting the same federal law requirements)).

2. In New Jersey, NJDOE is responsible overall for the State's compliance with federal requirements for due process hearings under the Individuals

with Disabilities Education Act ("IDEA"). Consistent with legislative authorization, NJDOE utilizes the New Jersey Office of Administrative Law ("NJOAL") to conduct the due process hearings required by the IDEA. *See* N.J.S.A. 52:14F-21.1. In such matters, NJOAL acts as NJDOE's agent in fulfilling NJDOE's duties under the IDEA. *See id.*; N.J.A.C. 6A:14-2.7(h). Indeed, an NJOAL regulation recognizes the agency's obligation to comply with the time frames set forth in 34 C.F.R. § 300.515. *See* N.J.A.C. 1:6A-18.1.

3. As a fundamental matter, the parties readily agree, and the CO sets forth clearly, how the initial 45-day period is established. Day 1, for purposes of calculating the 45-day time period, is defined in paragraph 8 of the CO. For example, for parent-filed petitions, Day 1 begins on the next calendar day after the expiration of the 30-day resolution period. As noted, to comply with its responsibilities under 34 C.F.R § 300.510, NJDOE transmits special education due process petitions to NJOAL for assignment to an Administrative Law Judge ("ALJ") to conduct a due process hearing. *See* N.J.S.A. 52:14F-21.1; N.J.A.C. 6A:14-2.7(h)(4). That administrative transmittal does not affect the commencement or running of the 45-day period established by 34 C.F.R § 300.515(a), all calendar days of which continue to be counted from Day 1 as set forth above. Based on that

starting date, the 45-day deadline for the FDD is established by counting all calendar days thereafter. And, no deviation from the FDD established by that counting may occur unless there is a party-generated request for an extension to adjust the Final Decision Date, to which the hearing officer (here the ALJ) agrees. *See* Consent Order ¶¶ 8, 9.

4. Applying that direction, every calendar day following Day 1 counts toward the expiration of the 45-day period within which the hearing and issuance of the ALJ's decision must occur to be compliant with the federal regulation. Any calendar days between NJDOE's transmittal of the due process petition to its agent, NJOAL, and the pre-hearing conference conducted by an ALJ with the parties counts toward the 45-day period. The Special Master understands that, as a general matter, the pre-hearing conferences are convened quickly, conducted via telephone, and are used by the ALJs to identify the parties' issues and hearing needs, and to schedule hearing dates.

5. Based on the federal expectation for hearings to be conducted and final decisions to be issued expeditiously in due process proceedings to comply with the 45-day period for such disputes, it is incumbent on NJDOE's agent, NJOAL, and the parties to the proceedings to endeavor to conduct hearing(s) during the time period before the expiration of the original FDD.

Prompt hearing dates and party availability should be expected to follow suit for due process petitions. The FDD may be extended only upon a *party-generated* request for an extension. The following examples are illustrative of what is and is not to be regarded as a party-generated request to extend the FDD:

a. At the pre-hearing conference, the ALJ may have to offer one more hearing dates to schedule the due process hearing within the 45-day period. The inability of one or more parties to accept the earliest of these proposed hearing dates does not constitute a party-generated request to extend the FDD. In other words, the number of intervening days between the initial offered date and the date ultimately accepted shall not be regarded as a party-generated request to extend the FDD. If, however, a party requests and insists on additional hearing days because, for example, of the number of witnesses it intends to present, and that request necessitates an additional hearing date or dates beyond the original FDD, the resulting extension of days past the FDD shall be regarded as party-generated. That said, requests for multiple hearing days due to the number of witnesses a party wishes to present and similar requests, which may require use of hearing days beyond the FDD should

prompt more searching inquiry by the ALJ maintaining control over the proceedings before an extension is granted. As part of the development of a Compliance Plan, the Special Master intends to examine further into delays associated with the asserted unavailability of attorneys, the asserted unavailability of district-personnel, and other bases advanced to support a single party's request for an FDD extension in a parent's due process complaint.

b. A party's request for more time to secure an expert, necessitating a delay in the scheduled dates for a hearing or in completing the hearing, shall be regarded as a party-generated request to extend the FDD, but only for a pre-determined amount of time granted by the ALJ for the party to expeditiously obtain and produce the expert.

c. In OAL proceedings generally, oral summations are the presumed manner of closing, *see* N.J.A.C. 1:1-14 (e) and (f); this procedure is consistent with the expectation that administrative proceedings will be conducted efficiently and expeditiously, *see* N.J.A.C. 1:1-14.2(a). This already significant presumptive expectation is of magnified importance when addressing due process petitions. It is inherent in the time frame established by Congress and implemented in the federal regulations. Thus, if a party requests the opportunity for a

written final summation, and the ALJ grants permission for such delay in the completion of proceedings, the requested time for the written submissions shall be regarded as a party-generated request to extend the FDD for an equivalent number of days. Relatedly, any time requested to secure a transcript of the hearing (assuming approval by the ALJ), as well as other similar party requests that delay the completion of final argument, shall likewise be regarded as a party-generated request to extend the FDD. Before approving such a request, the ALJ shall estimate the time reasonably necessary to expeditiously secure the transcript and inform the parties so that all parties understand the anticipated duration of the requested extension and may be fairly heard before it is granted.

d. The ALJ is expected to have a reasonable amount of time to prepare and issue the final decision following oral or written summations. In discussion before the Special Master, both Plaintiffs and Defendants agreed that ALJs need time to prepare and issue a final decision. However, in view of the 45-day period for hearing and decision expected under federal law, the time expected for issuance of the final decision on a due process petition is necessarily compressed. Accordingly, to accommodate the ALJ's need for

sufficient time to prepare and issue a final decision while recognizing the expedited nature of these proceedings under federal law, for compliance review purposes, the Special Master will regard a reasonable period for preparation and issuance of the decision as included within a party's request to adjust the FDD when extended beyond the 45-days. That amount of time shall reasonably be expected to require two calendar weeks due to the expectation of expedience in these matters. Thus, a party-generated request for delay of the FDD beyond the original 45-day period, such as those previously discussed, must allow two calendar weeks for the ALJ's issuance of the decision. The addition of such extended period to an adjusted FDD shall not render for purposes of review a matter noncompliant with the 45-day period required under the CO.

6. The Adjournment Form required for use under the ACO and CO shall be completed so as to provide sufficient detail to support each of the bases identified in this Order that will extend the FDD. If sufficient detail is lacking, it will not be regarded by the Special Master as supporting an adjusted FDD. Because the pre-hearing conferences (and other conferences) are conducted by telephone, and generally not conducted in person, each party's agreement or disagreement with the information set

forth in an Adjournment Form prepared by the ALJ shall be captured on the recording after the content of the Adjournment Form is read to them. In addition, the Special Master directs the following monitoring of the recorded pre-hearing conferences during which adjustments to the FDD are discussed and agreed upon, and ultimately memorialized in the Adjournment Forms to be filed and available for review. Commencing August 1, 2026 and continuing on a monthly basis for the next 9 months:

a. NJDOE shall obtain from NJOAL and provide to the Special Master copies of all recorded pre-hearing conferences and the Adjournment Forms that relate to any extension of a matter's initial or subsequently established FDD addressed during the conference.

b. Each month, NJDOE shall listen to a random sample of 50% of the recorded conferences and, on a bi-weekly basis, provide the Special Master with a certification reporting on the accuracy of the calculation and tracking of FDDs, as detailed and explained in the Adjournment Forms (with the adjustments discussed herein). During the same month period, the Special Master shall listen to a random sample of 33% of the recorded conferences and similarly examine the accuracy of the timekeeping of FDDs and the information reflected in the Adjournment Forms. The expected

overlap with NJDOE's certified reporting will help ensure consistency in these respective reviews.

c. The use of the Adjournment Form shall continue to be required as set forth in the CO, as amended by the ACO, and shall provide the additional information and detail necessary to account for party-generated requests to adjust the FDD for purposes of the Special Master's monitoring and reporting on compliance with the 45-day period.

SO ORDERED.



Jaynee LaVecchia, Special Master